

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**ENVIRONMENTAL ASSESSMENT**

**Docket No. AB 33 (Sub-No. 324X)**

**Union Pacific Railroad Company—Abandonment Exemption—in Harris and Chambers Counties, Tex.**

**BACKGROUND**

In this proceeding, Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Harris and Chambers Counties, Texas. The rail line proposed for abandonment extends approximately 2.23 miles from Milepost 2.4 near Baytown, Texas to Milepost 4.63 on the east side of Cedar Bayou (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties, and other railroad appurtenances and to dispose of the right-of-way.

**ENVIRONMENTAL REVIEW**

UP submitted a combined Environmental and Historic Report that concludes the quality of the human environment would not be affected significantly because of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. UP served the Environmental and Historic Report on appropriate federal, state, and local agencies, as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)].<sup>1</sup> The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

***Diversion of Traffic***

UP's Environmental Report states that no traffic has moved over the Line in at least two years. Accordingly, the proposed abandonment and discontinuance would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

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<sup>1</sup> The Environmental and Historic Reports are available for viewing on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov) by going to "E-Library," selecting "Filings," and then conducting a search for AB 33 (Sub-No. 324X).

## *Salvage Activities*

If abandonment and discontinuance authority is granted in this proceeding, UP intends to salvage the steel rails, wooden ties, and associated track material (angle bars, tie plates, spikes, switches, and other metal party) on the Line and vacate the rail overpass at State Route 146 (the SR-146 Overpass) so that it can be removed to facilitate a highway project being undertaken by the Texas Department of Transportation (TXDOT). A vertical lift span rail bridge known as the Cedar Bayou Bridge crossed the Cedar Bayou is also located on the Line. It is likely that this bridge would be removed by UP if abandonment authority is granted. The U.S. Coast Guard (USCG) has informed UP that the bridge must either be removed or returned to an active transportation function. Because no rail traffic has moved over the Line in the past two years and UP has filed for abandonment authority with the Board, it is unlikely that the bridge would serve an active transportation function in the future.

UP does not intend to alter any culverts or other drainage structures on the Line or to regrade the rail right-of-way. UP states that ballast would likely be left in place, but may be removed if it is of sufficient quality to be reused elsewhere. Additionally, UP intends to remove and remediate the three at-grade road crossings on the Line and to dismantle the warning devices at those crossings.

## *Land Use*

UP provided the combined Environmental and Historic Report to the Harris and Chambers County governments and requested comments regarding the consistency of the proposed abandonment with local land use plans. UP has provided OEA with a copy of a resolution passed by the Chambers County Commissioners Court (Chambers County) in which Chambers County states its support for the removal of the rail line. Because salvage activities would take place within an existing rail right-of-way, OEA does not anticipate that the proposed abandonment would be inconsistent with any existing land use plans. Accordingly, no mitigation is recommended regarding the impact of the proposed abandonment and discontinuance on local land use.

UP has requested comments from the U.S. Natural Resource Conservation Service (NRCS) regarding the impact of the proposed abandonment and discontinuance on agricultural land, but have received no comments from NRCS to date. Because salvage activity would take place within an existing rail corridor, OEA concludes that the proposed abandonment and discontinuance would not result in the conversion of prime farmland or other impacts to agricultural resources. Accordingly, no mitigation related to agricultural resources is recommended.

UP has requested comments on the proposed abandonment from the National Geodetic Survey (NGS) regarding the potential impact of the proposed abandonment on any geodetic state markers that may be located in the vicinity of the Line. To date NGS has not provided

comments. OEA conducted a search of NGS' Survey Data Explorer tool.<sup>2</sup> The results of the search indicated that no geodetic station markers may be present in the vicinity of the Line. Accordingly, no mitigation related to geodetic station markers is recommended.

### *Coastal Zone Compliance*

OEA's review has concluded that the Line is located within the Texas Coastal Management Program (CMP) boundary. To date, the Texas Coastal Management Program (TCMP), has not provided comments on the proposed abandonment. Accordingly, OEA is recommending a condition requiring UP to consult with TCMP and if appropriate, receive a consistency determination from TCMP on the proposed abandonment.

### *Water Resources*

The Line crosses Cedar Bayou at its eastern terminus. The Line also crosses a small drainage ditch on the eastern side of Tri City Beach Road and appears to cross several areas adjacent to forested or shrub wetlands.<sup>3</sup>

To date, the Texas Commission on Environmental Quality (TQES) has not provided comments regarding the potential impacts of the proposed abandonment on water quality or the potential need for a permit under Section 402 of the Clean Water Act (33 U.S.C. § 1342). Because the proposed abandonment would not result in the discharge of wastewater or stormwater, OEA concurs with UP that a Section 402 permit would not be required.

To date, the U.S. Army Corps of Engineers (the Corps) has not commented on the potential impact of the proposed abandonment to waterways and wetlands or the potential need for a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). OEA believes that the removal of track, ties, and related material from the Line would not result in the discharge of any dredge or fill material into waters of the United States, including wetlands, and that these activities would therefore not require a Section 404 permit.

The removal of the Cedar Bayou Bridge may, however, require authorization from the Corps. Accordingly, OEA is recommending a condition requiring UP to consult with the Corps prior to undertaking any salvage activity related to the removal of the Cedar Bayou Bridge and to comply with the Corps' requirements. Consistent with the Coast Guard's requirements, UP has engaged in early coordination with the Coast Guard District Bridge Office regarding the Cedar Bayou Bridge.

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<sup>2</sup> National Geodetic Survey Data Explorer:  
<https://www.ngs.noaa.gov/NGSDDataExplorer/> (last visited March 29, 2017).

<sup>3</sup> U.S. Fish and Wildlife Service, National Wetlands Inventory,  
<http://www.fws.gov/wetlands/Data/Mapper.html> (last visited March 22, 2017).

### *Hazardous Materials*

UP states that there are no hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. OEA's review has confirmed that there are no federally listed remediation sites near the Line.<sup>4</sup> Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is recommended.

### *Biological Resources*

UP requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. USFWS submitted comments recommending that UP conduct a search of the USFWS Information, Planning, and Conservation (IPaC) system to identify protected species in the project area. OEA conducted a search of the IPaC system and received an official list of species in the project area from USFWS on March 23, 2017.<sup>5</sup> The table below shows the protected species known or thought to occur in the immediate vicinity of the Line, as identified by OEA's search. OEA notes that, based on a search using the USFWS critical habitat mapping tool, the Line is not located in or near critical habitat for any of the species identified.<sup>6</sup>

<b>Protected Species in the Project Area</b>	
<b>Mammals</b> West Indian Manatee ( <i>Trichechus manatus</i> )	<b>Status</b> Endangered
<b>Birds</b> Least Tern ( <i>Sterna antillarum</i> )	Endangered
Piping Plover ( <i>Charadrius melodus</i> )	Threatened
Red Knot ( <i>Calidris canutus rufa</i> )	Threatened
<b>Reptiles</b> Hawksbill Sea Turtle ( <i>Eretmochelys imbricate</i> )	Endangered
Kemp's Ridley Sea Turtle ( <i>Lepidochelys kempii</i> )	Endangered
Leatherback Sea Turtle ( <i>Dermochelys coriacea</i> )	Endangered
Loggerhead Sea Turtle ( <i>Caretta caretta</i> )	Threatened
<b>Flowering plants</b> Texas Prairie Dawn-flower ( <i>Hymenoxys texana</i> )	Endangered

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<sup>4</sup> Environmental Protection Agency, NEPAassist, <http://nepassisttool.epa.gov/nepassist/entry.aspx> (last visited March 22, 2017).

<sup>5</sup> U.S. Fish and Wildlife Service, Information, Planning, and Conservation System, <http://ecos.fws.gov/ipac/> (last visited March 23, 2017).

<sup>6</sup> U.S. Fish and Wildlife Service, Critical Habitat Portal, <http://ecos.fws.gov/crithab/> (last visited February March 23, 2017).

The Texas prairie dawn-flower (*Hymenoxys texana*) is a rare member of the sunflower family (*Asteraceae*) endemic to the general Houston, Texas area. First described in 1889, it was considered extinct until its rediscovery in 1981. The species is found in sparsely vegetated areas of fine-sandy soil in open grasslands in poorly drained depressions and saline swales, including at the base of Mima (or pimple) mounds. Threats to the species include loss of habitat due to urban development, the invasion of brush and other woody species, and herbicide use. OEA has reviewed available satellite and aerial imagery of the project area and has determined that suitable habitat for the Texas prairie dawn-flower is unlikely to be present in the rail right-of-way. The Line traverses both wooded areas and land that has been developed for residential and commercial use. There do not appear to be any areas of open grassland in the rail right-of-way where the species could be found. OEA has therefore concluded that the proposed abandonment would not be likely to affect the Texas prairie dawn-flower. OEA is sending a copy of this EA to USFWS for review and is specifically seeking that agency's concurrence with OEA's determination.

The three bird species listed in the table above are shore birds that may be encountered along the Texas Gulf Coast. The least tern (*Sterna antillarum*) is typically found in broad, level expanses of open sand or gravel beaches, other open shoreline areas, or, more rarely, on broad river sandbars. The habitat of the piping plover (*Charadrius melodus*) includes sandy beaches and sparsely vegetated shores and islands of rivers, lakes, and ponds. The red knot (*Calidris canutus rufa*) is a migratory shorebird with an extensive range and several populations are known to winter in or pass through the Texas Gulf Coast during their annual migration. During wintering and migration, the red knot is found in coastal and estuarine habitats with large areas of sparse vegetation, such as might occur along the mouths of bays, in tidal flats, and tidal inlets. For all three of these bird species, the primary threat related appears to be disturbance of coastal habitat. Salvage or track, ties, and related material from the rail right-of-way would have no effect on these species because no suitable habitat exists within the rail right-of-way. Because the Cedar Bayou is a tidal waterway that may have suitable habitat for these species, the removal of the Cedar Bayou Bridge could potentially result in minor, temporary disturbance of shoreline habitat, but OEA has concluded that this activity would be unlikely to adversely affect the piping plover, least tern, or red knot. To provide USFWS with an opportunity to comment on OEA's conclusions, OEA is recommending a condition requiring UP to consult with USFWS prior to undertaking any salvage activity related to the removal of the Cedar Bayou Bridge.

Four species of sea turtles are known to occur near the proposed abandonment. The green sea turtle (*Chelonia mydas*) are not known to permanently inhabit Galveston Bay waters, but use the bay and the Gulf of Mexico as a seasonal foraging area. These turtles typically prefer areas with seagrass beds on which to feed, but occasionally travel into nearshore waters. Adult hawksbill sea turtles (*Eretmochelys imbricate*) occur in a variety of marine habitats, especially coral reefs, but may also be found in seagrass areas. Loggerhead sea turtles (*Caretta caretta*) inhabit coastal waters in temperate, subtropical, and tropical waters globally. The species may be found in all United States coastal shelf waters on the Atlantic side, including the Gulf of Mexico, and many estuaries and bays provide important inshore habitat. Kemp's ridley sea turtles (*Lepidochelys kempii*) are relatively restricted in range, existing primarily in the Gulf of Mexico and can be encountered along the length of the Texas coast. This turtle species is

regularly encountered in Galveston Bay, as well as Tabbs Bay, approximately one mile south of the Line. Threats to sea turtles of all species include the loss and disturbance of nesting areas and habitat due to development.

Because there is no critical habitat or suitable nesting habitat for any sea turtle species near the Line, the proposed abandonment would not affect sea turtle habitat. It is possible, however, that individual sea turtles could be present as transient individuals in Cedar Bayou at the location of the Cedar Bayou Bridge. A Biological Assessment prepared for the construction of an ethylene stream cracking plant at the Cedar Bayou Chemical Plant, which is located adjacent to Cedar Bayou to the north of the Line, concluded that the potential for sea turtles of any species to inhabit or travel far into the Cedar Bayou is low because those species does not tolerate freshwater.<sup>7</sup> The Line crosses a tidal portion of Cedar Bayou, however, where sea turtles could potentially travel. OEA therefore concludes that it is possible, although unlikely, that individual sea turtles could be present in the section of Cedar Bayou adjacent to the Line and where the Cedar Bayou Bridge is located.

If individual sea turtles were present near Cedar Bayou Bridge, the removal of the Cedar Bayou Bridge could disturb those individuals. Accordingly, OEA is recommending a condition that would require UP to consult with USFWS and to report the results of the consultation to OEA prior to undertaking any salvage activity related to the removal of the Cedar Bayou Bridge. OEA is not recommending any mitigation related to the salvage of track, ties, and related track materials on the remainder of the Line because suitable habitat for sea turtles is not present in those areas and salvage activities there would not affect sea turtles or sea turtle habitat.

The West Indian manatee is occasionally sighted along the Texas Gulf Coast and rare, transient visits to the Galveston Bay area have been documented. Manatees are generally found in shallow, slow-moving river, estuaries, saltwater bays, canals, and coastal areas where seagrass beds or freshwater vegetation are present. Threats to manatees include collisions with watercraft, ingestion of litter, becoming trapped in flood control structures, and, especially, the loss of habitat. OEA believes it is unlikely, but possible, that individual manatees could be present in the Cedar Bayou near the Line and the Cedar Bayou Bridge. If individual manatees were present in the waterway, the removal of the Cedar Bayou Bridge could disturb those individuals. Accordingly, OEA is recommending a condition that would require UP to consult with USFWS prior to undertaking any salvage activity related to the removal of the Cedar Bayou Bridge and to report the results of the consultation to OEA before the Cedar Bayou Bridge is removed. OEA is not recommending any mitigation related to the salvage of track, ties, and related track materials from the remainder of the Line would not affect manatees or manatee habitat because there is no suitable habitat for manatees in those areas.

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<sup>7</sup> SWCA Environmental Consultants, 2012, Draft Final Biological Assessment in support of the U.S. Environmental Protection Agency's decision to issue a greenhouse gas permit in connection with the proposed expansion of the Chevron Phillips Cedar Bayou Plant near the City of Baytown, Harris County, Texas, <https://archive.epa.gov/region6/6pd/air/pd-r/ghg/web/pdf/chevron-draft-bio-assess.pdf>.

### *Air Quality*

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality.

### *Noise*

Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

### *Summary*

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. OEA is providing a copy of this EA to the following agencies for review and comment: TCMP, TQES, USFWS and the Corps.

## **HISTORIC REVIEW**

### *Historical Background*

The Cedar Bayou Bridge was originally constructed in 1912 over the St. Francis River in Cody, Lee County, Arkansas as part of the St. Louis, Iron Mountain and Southern Railway, which merged into the Missouri Pacific Railroad (Missouri Pacific) in 1917. A vertical lift span bridge design was adopted for the bridge rather than a swing or bascule span to preserve a wide navigation channel and permit continued shipping on the St. Francis River. When erected, the bridge consisted of twelve single track deck plate girder spans, one single track through riveted vertical lift span, with towers, counterweights, and operating machinery, all supported by concrete piers, as well as trestle approaches at each end. The lift span was 162 feet in length and could rise to 70-feet above the high-water mark. The full original length of the bridge was 1,069 feet.

Although the vertical lift span was rarely put into use, the bridge over the St. Francis River remained in use until 1967, when the Missouri Pacific abandoned the rail line. At the same time as that rail line was being abandoned, Missouri Pacific was constructing the Line in Baytown, Texas to serve the U.S. Steel Texas Works steel mill, which was also under construction. The Corps ruled at the time that the new crossing at Cedar Bayou, near the end of the Line, would require a high-level crossing or movable span bridge so as not to obstruct navigation in Cedar Bayou. Missouri Pacific determined that it would be costlier to construct a new high-level crossing than to move the existing vertical lift span bridge 830 miles from its original location on the St. Francis River in Arkansas to the new location in Baytown, Texas. The spans and towers were transported by barge down the Mississippi River and across the Gulf of Mexico to Baytown, where they were erected as part of an 853-foot long bridge. Some elements of the Cedar Bayou Bridge were constructed in 1967, including the substructure, the spans extending each of the east approach span, the counter weights, and the electric motor and its housing on top of the lift span. The Cedar Bayou Bridge has now been out of service for

many years and is not operable for rail transportation or for other purposes. UP has estimated that the cost of repairing the bridge at between 5.5 and 8.5 million dollars and the cost of removing the bridge at approximately 2.25 million dollars.

In addition to the Cedar Bayou Bridge, there are two other bridges on the Line, both of which were constructed around the same time as the Line. The larger of these is the SR-146 Overpass, which is a steel girder bridge approximately 107 feet in length and the other is an approximately 40-foot wooden trestle bridge over a drainage ditch on the west side of Tri City Beach Road. These structures are of common design and construction and feature no notable features.

UP acquired Missouri Pacific in 1982 and the merger became official in 1997. The U.S. Steel continued to operate the mill served by the Line until 1986 and another manufacturer operated the mill for two more years. The facility was closed permanently in 1988 and the area was developed as the Cedar Point Industrial Park.

### *Initiation of Section 106 Process*

The abandonment of a line of railroad is considered an undertaking under Section 106 of the National Historic Preservation Act. OEA is responsible for meeting the Board's responsibilities under Section 106, including the identification of historic properties located within the Area of Potential Effect (APE) that are listed in or eligible for listing in the National Register of Historic Places (the National Register), assessing potential effects to National Register-eligible historic properties within the APE, and resolving adverse effects, in consultation with the appropriate State Historic Preservation Officers, Tribal Historic Preservation Officers, and other consulting parties. In railroad abandonment cases, the APE is defined as the rail right-of-way because this is the area where salvage activity could occur. OEA typically does not consider effects to historic properties related to potential future uses of the right-of-way by non-railroad entities.

Railroad applicants seeking to abandon a rail have been delegated the authority to contact SHPOs before the Section 106 process under NHPA officially begins. In this case, UP requested preliminary comments from the Texas Historical Commission (the SHPO) in April 2016. OEA began consultation with UP and the SHPO in August 2016. OEA invited several historic organizations to participate in the Section 106 process. Of these groups, the Historic Bridge Foundation agreed to participate as a consulting party. In October 2016, OEA invited the Advisory Council on Historic Preservation (ACHP) to participate in the Section 106 process. ACHP declined to participate.

### *Identification of Historic Properties*

In response to UP's initial request for comments in April 2016, the SHPO requested that OEA or UP evaluate the eligibility of the bridge for National Register listing. UP responded to the SHPO's request in its Environmental and Historic Report, which concluded that no historic properties listed in or eligible for listing in the National Register would be affected by the



proposed abandonment. UP explained that it reached this conclusion because none of the structures within the rail right-of-way, including the Cedar Bayou Bridge, have been in place for more than 50 years. UP reasoned that, although the Cedar Bayou Bridge was originally constructed in 1912 (104 years ago), it has been in place in its current location for only 49 years and therefore does not meet the criteria for being “in place for 50 years.”

By letter dated April 20, 2016, the SHPO submitted additional comments stating that, although the Cedar Bayou Bridge was moved to its current location in 1967, the structure may be eligible for listing in the National Register. The SHPO noted that, although location is one of the seven aspects of historic integrity, structures relocated from their original location may be eligible for listing in the National Register if they meet Criteria Consideration B: Moved Properties of the National Register criteria of eligibility and are significant primarily for their architectural or engineering value. The SHPO requested that the Board consult with the SHPO to determine whether the Bridge is eligible for listing in the National Register. For the reasons listed below, OEA agrees with the SHPO.

After receiving the SHPO’s comments, UP engaged Summit Envirosolutions, Inc. (Summit) to undertake a Historic Resources Evaluation of the Cedar Bayou Bridge. According to the evaluation report, which has been provided to the SHPO and has been made available to the public on the Board’s website at [www.stb.dot.gov](http://www.stb.dot.gov), the Cedar Bayou Bridge was designed by the firm Waddell & Harrington, whose principals were prominent bridge engineers in the early twentieth century and among the foremost designers of vertical lift span bridges during that period. Because only nine vertical lift span bridges are known to have been built nationwide prior to 1912, the Cedar Bayou Bridge is an early example of this bridge type and was an example of an unusual bridge type in its original location in Arkansas. In its current location, the bridge is a rare extant example of the bridge type, as it may be other only existing example of a pre-World War II vertical lift span bridge in Texas.<sup>8</sup>

The Historic Resources Evaluation report concluded that the Cedar Bayou Bridge may be eligible for listing in the National Register under Criterion C, as a rare extant example of a vertical lift truss span dating from the early twentieth century. The report also concluded that the bridge meets Criteria Consideration B: Moved Properties because it retains excellent integrity of materials, design and workmanship; its major features are of original materials and those components that have been replaced are similar to the original components. Because it remained in use as a railroad crossing following its relocation, the Cedar Bayou Bridge also retains integrity of feeling, association, and setting in its current location.

After reviewing the available information provided by Summit and UP, and in consultation with the SHPO, OEA determined that the Cedar Bayou Bridge is a historic property that is eligible for inclusion in the National Register under Criterion C as an example of an uncommon and distinctive bridge type. Although it was moved to its present location in 1967,

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<sup>8</sup> The Historic Resources Evaluation can be viewed at [https://www.stb.gov/ect1/ecorrespondence.nsf/PublicIncomingByDocketNumber/B73F460AD9EDDD9F852580AC005CD83E/\\$File/EI-25736.pdf?OpenElement](https://www.stb.gov/ect1/ecorrespondence.nsf/PublicIncomingByDocketNumber/B73F460AD9EDDD9F852580AC005CD83E/$File/EI-25736.pdf?OpenElement).

OEA concurred that the move from its original location does not diminish the property's integrity or ability to convey historical significance and that the structure therefore meets Criteria Consideration B for moved properties.

#### *Assessment of Effects to Historic Properties*

By letter dated July 27, 2016, the SHPO informed UP that, based on its review of the Historic Resources Evaluation report prepared by Summit, the SHPO believes that the demolition of the Cedar Bayou Bridge would constitute an adverse effect on a historic property eligible for listing in the National Register. By letter dated August 12, 2016, Summit, on behalf of UP, requested that the Board make a determination of adverse effect to a historic property and inform the SHPO and the Advisory Council on Historic Preservation (ACHP) of the adverse effect in order to move forward with the Section 106 process. After reviewing the available information, OEA determined that abandonment of the Line would result in an adverse effect to the historic Cedar Bayou Bridge because, should the Board grant abandonment authority, UP would be authorized to salvage the structure.

On October 3, 2016, OEA notified the Advisory Council on Historic Preservation (ACHP) of the potential adverse effect to historic properties and invited ACHP to participate in the Section 106 process. ACHP notified OEA on November 18, 2016 that ACHP was declining to participate in the Section 106 in this case.

#### *Resolution of Adverse Effects to Historic Properties*

Section 106 requires that federal agencies consider alternatives or modifications to an undertaking to avoid, minimize, or mitigate adverse effects to historic properties. In this case, alternatives to the proposed railroad abandonment include rejection, discontinuance of service without abandonment, and continued operation by another operator. Under any of those alternatives, the Line would not be abandoned and no adverse effect to historic properties listed in or eligible for listing in the National Register would occur. In cases where a line of railroad has been out of service and there are no shippers located on the rail line proposed for abandonment, such as is the case here, denial of abandonment is rare and must be based on extraordinary economic need for the continued service over the rail line.

The Board cannot deny authority for a railroad to abandon a rail line solely on the grounds that it would adversely affect historic resources. Implementation of Environmental Laws, 7 I.C.C. 2d. 807, 829 (1991). UP has stated that there are no shippers on Line requiring rail service and that there is no potential for future requests for rail service because the project area has been rezoned to exclude industrial use.

Historic properties associated with rail line are sometimes preserved through the conversion of the rail line into a multiuse trail under the interim trails use (railbanking) provisions of the National Trails System Act (Trails Act). Under the Trails Act, railbanking is a voluntary agreement between a railroad company and a trail sponsor, which may be a private organization or a governmental organization. Once an agreement is reached between the parties,

the abandonment is held in abeyance and the rail corridor is preserved until such a time as the rail line is reactivated for rail service. The Board's role under the Trails Act is ministerial and the Board cannot require that a railroad enter into a trail use agreement or specify the terms of that agreement. OEA notes that, in this case, there is likely no viable opportunity for trail use that would preserve the Cedar Bayou Bridge because the Bridge is located at the terminus of the Line and does not abut properties that could be converted into trails use.

As noted above, the Coast Guard has informed UP that the Cedar Bayou Bridge must either be removed or returned to an active transportation function in order to avoid creating a hazard to navigation in the Cedar Bayou. Because there is no potential transportation use for the Cedar Bayou Bridge, either for rail transportation or as a trail, removal of the structure from its current location appears to be the only feasible option.

On March 3, 2017, UP voluntarily offered the Cedar Bayou Bridge for sale so that potentially interested parties could have the opportunity to purchase the structure and relocate it to another site. UP made the offer of sale in a public notice that was published in newspapers of general circulation in Harris and Chambers counties and on the website of the Historic Bridge Foundation. The notice requests that offers to purchase the Cedar Bayou Bridge be submitted within 20 days of publication of the notice, or by March 23, 2017. UP did not received any bids to purchase the Cedar Bayou Bridge during that 20-day period. Accordingly, sale and relocation of the Cedar Bayou Bridge does not appear to be a feasible alternative to salvaging the structure.

The Board's authority to resolve adverse effects to historic rail properties through mitigation is limited. *Id.* at 828. The Board cannot force the railroad applicant to sell off or donate its property, or impose a restrictive covenant upon the deed. The Board also cannot force a railroad to enter into trails use negotiations involuntarily. Documentation of the historic resources, which may include taking photographs or preparing a history before a resource is altered or removed, is generally the only form of nonconsensual mitigation the Board can impose. Under the Advisory Council on Historic Preservation's regulations, mitigation of adverse effects to historic properties can, however, be developed in a Memorandum of Agreement (MOA). OEA is currently consulting with the SHPO, and UP, as well as the Historic Bridge Foundation, as a consulting party, to develop an MOA that will mitigate the unavoidable effects to the National Register-eligible Cedar Bayou Bridge.

Because the Section 106 process has not been completed, OEA is recommending a condition that would require UP to maintain its interest in and take no steps to alter the historic integrity of historic properties that have been identified in the APE until the Section 106 process has been completed. This condition would apply only to the Cedar Bayou Bridge because no other historic properties eligible for listing in the National Register have been identified within the APE. If abandonment authority is granted and if the condition is imposed, UP would be able to salvage track, ties, and related material from the remainder of the Line but would be barred from removing or disposing of the Cedar Bayou Bridge until the Board has removed the condition in a future decision.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Park Service

Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area.<sup>9</sup> The search did not identify any federally recognized tribe that could potentially have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment.

## **CONDITIONS**

We recommend that the following conditions be imposed on any decision granting abandonment authority:

- 1. Union Pacific Railroad Company (UP) shall retain its interest in and take no steps to alter the historic integrity of the vertical lift span bridge over Cedar Bayou (the Cedar Bayou Bridge) until the historic preservation process under Section 106 of the National Historic Preservation Act has been completed. UP shall continue to consult with Texas Historical Commission (the State Historic Preservation Officer or SHPO), the Board's Office of Environmental Analysis (OEA), and other consulting parties regarding resolving adverse effect to the Cedar Bayou Bridge. UP shall inform OEA in writing of all consultation with the SHPO regarding Cedar Bayou Bridge.**
- 2. Prior to undertaking the removal of the vertical lift span bridge over Cedar Bayou (the Cedar Bayou Bridge), Union Pacific Railroad Company (UP) shall consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential for impacts to federally-listed protected species related to the removal of the Cedar Bayou Bridge. UP shall report the results of any consultation with USFWS in writing to the Board's Office of Environmental Analysis.**
- 3. Prior to undertaking the removal of the vertical lift span bridge over Cedar Bayou (the Cedar Bayou Bridge), Union Pacific Railroad Company (UP) shall consult with the U.S. Army Corps of Engineers (the Corps) to determine whether a Corps permit would be required under Section 404 of the Clean Water Act for the removal of the Bridge. UP shall report the results of any consultation with the Corps in writing to the Board's Office of Environmental Analysis.**
- 4. Prior to beginning any salvage activities, including the removal of track, ties, and related materials, UP shall consult with the Texas Land Commissioner to determine whether state coastal management consistency certification is required. UP shall report the results of these consultations in writing to the Board's Office of Environmental Analysis prior to beginning of salvage operations.**

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<sup>9</sup> National Park Service, National NAGPRA Program Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited March 24, 2017).

## **CONCLUSIONS**

Based on the information provided from all sources to date, OEA concludes that, if the conditions above are imposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption would not be affected.

## **PUBLIC USE**

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

## **TRAILS USE**

Requests for a notice of interim trail use (NITU) are due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

## **PUBLIC ASSISTANCE**

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

## **COMMENTS**

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB 33 (Sub-No. 324X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental

contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at Joshua.Wayland@stb.gov.

Date made available to the public: April 3, 2017.

**Comment due date: April 18, 2017.**

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.